



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

MAR 28 1940

B-7785

The Honorable,

The Secretary of the Treasury.

Sir:

There have been brought to my attention letters of November 18 and November 20, 1939, from the Administrative Assistant, Procurement Division, Treasury Department, to the Chief, Contract Examining Section of this office, concerning certain leases made by the Procurement Division for space to be occupied by the Work Projects Administration. The leases had been questioned by this office because the stipulated initial terms extended beyond the end of the current fiscal year.

The letter of November 18, 1939, is as follows:

"Reference is made to your letter of November 14, on the subject of lease numbered ER-T63ps-13762, dated August 7, 1939, with Helen S. Henry, Adelle S. McKinney and Carrie G. Benson, for rental of second floor of Schuler Building, El Dorado, Arkansas, for the term beginning August 16, 1939 and ending June 30, 1941.

"There appears to be no good reason for having executed the above mentioned lease to cover a period extending beyond the current fiscal year. However, the lease contains a thirty day cancellation clause and if it might otherwise remain in effect beyond the current appropriation the State Procurement Officer of Arkansas will cancel it as of June 30, 1940.

"Kindly advise this office as to whether or not this assurance obviates the necessity of raising further objection to the term of the lease as it is now written."

The letter of November 20, 1939, is as follows:

"Reference is made to your letter of November 15, in which explanation is requested as to why the period of lease numbered ER-721ps-87071, dated August 29, 1939, with Loew's Theatre and Realty Corporation, covering space in the building located at 188 East 72nd Street, New York, New York, was drawn to extend beyond the current appropriation.

"Advertising was done in this case for space for one year to be covered by a lease renewable for two more years on the assumption that the space will be required for at least one year and more favorable offers would be secured than if nine and one-half months were stipulated as the period of the lease. The advertisement further stipulated that the lease to be drawn should be cancellable by either party on thirty days notice and the State Procurement Officer of New York is under orders to cancel it as of June 30, 1940 if funds are not made available for its continuance beyond the current appropriation.

"If the procedure followed in this case is considered objectionable, kindly so advise this office."

The lease of August 7, 1939, was executed for the Government by the Chief, Award & Contract Section, Procurement Division. The lease of August 29, 1939, was executed for the Government by the State Procurement Officer, New York.

It is settled that a lease to the Government made under authority of an annual appropriation is not effective beyond the end of the fiscal year for which the appropriation is made, and that if the lease is made for a longer term it may be viewed as binding the Government to the end of such fiscal year, only, with an option in the Government to renew the lease for the further period, contingent upon the availability of future appropriations for that purpose. Section 3679, Revised Statutes, as amended, 31 U. S. C. 665; section 3732, Revised Statutes, 41 U. S. C. 11; Leiter v. United States, 271

U. S. 204; Goodyear v. United States, 276 U. S. 287; Brownstein-Louis Company v. United States, No. 44108, decided by the Court of Claims October 2, 1939; 1 Comp. Gen. 10; 5 id. 355; id. 522; A-91697, March 3, 1938. In Leiter v. United States, 271 U. S. 204, 207, the Supreme Court said:

"\* \* \* A lease to the Government for a term of years, when entered into under an appropriation available for but one fiscal year, is binding on the Government only for that year. McCullum v. United States, 17 Ct. Cls. 92, 104; Smoot v. United States, 38 Ct. Cls. 418, 427. And it is plain that, to make it binding for any subsequent year, it is necessary, not only that an appropriation be made available for the payment of the rent, but that the Government, by its duly authorized officers, affirmatively continue the lease for such subsequent year; thereby, in effect, by the adoption of the original lease, making a new lease under the authority of such appropriation for the subsequent year. \* \* \*"

It follows that the two leases here in question, together with any others made on the same basis, will terminate by operation of law on June 30, 1940, unless affirmatively renewed for a further period pursuant to appropriations made available for that purpose. Under these circumstances a formal cancellation of the leases as of June 30, 1940—although advisable, if they are not to be extended—would not be required, but an affirmative renewal of such leases would be required if they are to be extended beyond that date. The usual Governmental procedure, of course, is to make leases of this character effective only to the end of the current fiscal year, with the right expressly reserved in the Government to renew for such further periods as may be stipulated. It is noted that section 3 of the act of August 27, 1935, 49 Stat. 886, authorizes the Director of Procurement, with

the approval of the Secretary of the Treasury, to procure space by lease for such period not in excess of five years as he may deem in the public interest for the housing of any Federal agency or agencies outside of the District of Columbia, except the Post Office Department, and to assign and reassign space therein, but it does not appear that the leases here in question were made under the authority of that statute or in compliance with its terms. See, in this connection, the opinion of the Attorney General, dated October 9, 1939, holding that concomitant authority conferred on the Director of Procurement and the Secretary of the Treasury by other sections of the said act of August 27, 1935, had been transferred to the Federal Works Agency by Re-organization Plan No. I, made effective July 1, 1939, by Public Resolution No. 20, approved June 7, 1939.

The matter is brought to your attention for such correction of the administrative procedure as may be deemed appropriate.

Respectfully,

(Signed) R. N. Elliott

Acting Comptroller General  
of the United States